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6 UNITED STATES DISTRICT COURT

7 DISTRICT OF NEVADA

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9 STEELMAN PARTNERS, LLP, *et al.*,

10 Plaintiffs,

Case No. 2:12-cv-00198-MMD-CWH

11 v.  
12 SANUM INVESTMENTS LIMITED, *et al.*,

13 Defendants.

ORDER

(Defendant Sanum Investment Ltd.'s Motion to Dismiss – dkt. no. 19)

(Defendant Jade Entertainment Group, Ltd.'s Motion to Dismiss – dkt. no. 20)

14  
15 **I. SUMMARY**

16 Before the Court are Defendants Sanum Investments Ltd.'s ("Sanum"), and Jade  
17 Entertainment Group Ltd.'s ("Jade") Motions to Dismiss (dkt. nos. 19 and 20). For the  
18 reasons discussed below, both motions are granted.

19 **II. BACKGROUND**

20 Plaintiffs consist of four architectural engineering firms incorporated under Paul  
21 Steelman Design Group (PSDG). (Dkt. no. 27 at 2.) PSDG maintains three offices  
22 organized under the laws of Nevada and operating principally in Nevada, including  
23 Steelman & Associates Nevada (S&A Nevada). PSDG also maintains a subsidiary in  
24 Macau, Steelman Architecture Asia (SAA). *Id.*

25 On or around October 5, 2006, Defendant Jade, a real estate development  
26 company organized under the laws of Macau and operating exclusively in Macau,  
27 requested that Plaintiffs begin architectural design work for the "Jade Entertainment  
28 Complex," a resort and entertainment development in Macau. (Dkt. no. 20 at 2.) S&A

1 Nevada then sent a letter of intent to Jade's Managing Director, Robert Wessels, in  
 2 November of 2006 confirming that architectural work would be performed upon receipt  
 3 of payment of a \$150,000 mobilization fee. (Dkt. no. 19, Ex. C.) S&A Nevada received  
 4 the mobilization fee payment on November 29, 2006, from Toko Kobayashi, attorney-in-  
 5 fact for Jade director Tokaku Kobayashi. (Dkt no. 19, Ex. B at 2.)

6 On January 22, 2007, S&A Nevada emailed Wessels a standard form  
 7 owner/architect agreement (the "agreement") which listed SAA as the project architect  
 8 and Sanum Investments Ltd. ("Sanum"), a real estate investment company organized  
 9 under the laws of Macau and operating exclusively in Macau, as the owner. (Dkt. no.  
 10 19, Ex. F at 1.) On October 24, 2007, employees of SAA met with Jade representatives  
 11 in Macau to discuss the development of the project. (Dkt. no. 20, Ex. B.)

12 On December 12, 2007, S&A Nevada emailed a proposal, drafted and signed by  
 13 SAA, detailing the scope of work to be performed and estimated costs to Wessels. (Dkt  
 14 no. 1 at 4 ¶ 17, see dkt. no. 19, Ex. D.) Later that month, S&A Nevada sent Wessels  
 15 two revised proposals incorporating edits discussed by the parties. (Dkt. no. 19 Exs. E  
 16 and F.) Like the previous proposal, they were drafted and signed by SAA.

17 On January 23, 2008, S&A Nevada sent a revised owner/architect agreement to  
 18 Wessels. (Dkt. no. 20, Ex. H.) On January 31, 2008, Wessels requested that  
 19 "Steelman & Associates, Las Vegas, Nevada" be added as the architect. (Dkt. no. 19,  
 20 Ex. G at 3.) Wessels also requested that the preliminary submission preparation fee be  
 21 reduced to from \$350,000 to \$250,000. (Dkt no. 19, Ex. G at 3.)

22 Negotiations broke down at this time. S&A Nevada notified Wessels in an email  
 23 dated January 31, 2008, that work on the project would cease until it received the entire  
 24 \$350,000 fee. (Dkt. no. 19, Ex. G at 1.) Plaintiffs allege that on or about February 7,  
 25 2008, Toko Kobayashi notified Plaintiffs that Jade would not honor the terms of the  
 26 agreement. (Dkt. no. 1 at ¶ 2). As a result, the parties never signed the agreement.  
 27 (Dkt. no. 19 at 4.)

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1        Plaintiffs claim Defendants breached the agreement by failing to pay the  
 2 mobilization fee, submission package fee, and the advanced payment for design work  
 3 performed. (Dkt. no. 1 at ¶ 34). Plaintiffs filed their original Complaint in this Court on  
 4 February 7, 2012, to recover the unpaid balance for work already performed under the  
 5 agreement. (Dkt. no. 1.) On July 26, 2012, Defendants Jade and Sanum filed separate  
 6 Motions to Dismiss for: (1) lack of personal jurisdiction under Federal Rule of Civil  
 7 Procedure 12(b)(2); (2) improper service of process under Federal Rule of Civil  
 8 Procedure 4; and (3) *forum non conveniens*. (Dkt. nos. 19 and 20.) Because this Court  
 9 determines that it lacks personal jurisdiction over Defendants, the Court does not reach  
 10 Defendants' other arguments.

11        **III.    LEGAL STANDARD**

12        “When a defendant moves to dismiss for lack of personal jurisdiction [under  
 13 Federal Rule of Civil Procedure 12(b)(2)], the plaintiff bears the burden of demonstrating  
 14 that the court has jurisdiction over the defendant.” *Pebble Beach Co. v. Caddy*, 453  
 15 F.3d 1151, 1154 (9th Cir. 2006). To meet this burden, a plaintiff must demonstrate that  
 16 personal jurisdiction over a defendant is (1) permitted under the applicable state’s long-  
 17 arm statute and (2) that the exercise of jurisdiction does not violate federal due process.  
 18 *Id.* Courts must consider whether personal jurisdiction exists over each defendant  
 19 separately. *Harris Rutsky & Co. Ins. Servs., Inc. v. Bell & Clements Ltd.*, 328 F.3d  
 20 1122, 1130 (9th Cir. 2003).

21        Where the issue is before the court on a motion to dismiss based on affidavits  
 22 and discovery materials without an evidentiary hearing, the plaintiff must make “a *prima  
 23 facie* showing of facts supporting jurisdiction through its pleadings and affidavits to avoid  
 24 dismissal.” *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d  
 25 1114, 1119 (9th Cir. 2002). The court accepts as true any uncontested allegations in  
 26 the complaint and resolves any conflicts between the facts contained in the parties’  
 27 evidence in the plaintiff’s favor. *Id.* However, for personal jurisdiction purposes, a court  
 28 “may not assume the truth of allegations in a pleading which are contradicted by

1 affidavit." *Alexander v. Circus Circus Enters., Inc.*, 972 F.2d 261, 262 (9th Cir. 1992)  
 2 (quotation omitted).

3 Federal courts have personal jurisdiction over defendants to the same extent as  
 4 the state courts "in the state in which the [federal] district court is located." *Huffy Corp. v.*  
 5 *Overlord Indus.*, 246 F. Supp. 2d 1093, 1096 (D. Nev. 2003) (quoting Fed. R. Civ. P.  
 6 4(k)(1)(A)). Under Nevada's long-arm statute, a Nevada court "may exercise jurisdiction  
 7 over a party to a civil action on any basis not inconsistent with the [C]onstitution of  
 8 [Nevada] or the Constitution of the United States." NRS § 14.065(1). Thus, "Nevada's  
 9 long-arm statute reaches the limits of due process set by the United States  
 10 Constitution." *Baker v. Dist. Ct.*, 999 P.2d 1020, 1023 (Nev. 2000).

11 Due process requires that a nonresident defendant have minimum contacts with  
 12 the forum state such that the exercise of personal jurisdiction does not offend traditional  
 13 notions of fair play and substantial justice. *Int'l Shoe Co. v. Wash.*, 326 U.S. 310, 316  
 14 (1945); *Decker Coal Co. v. Commonwealth Edison Co.*, 805 F.2d 834, 838 (9th Cir.  
 15 1986). A defendant's conduct and connection with the forum must be such that the  
 16 defendant should reasonably anticipate being haled into court there. *Sher v. Johnson*,  
 17 911 F.2d 1357, 1361 (9th Cir. 1990) (citing *World-Wide Volkswagen Corp. v. Woodson*,  
 18 444 U.S. 286, 297 (1980)).

19 The constitutional touchstone for determining whether an exercise of personal  
 20 jurisdiction comports with due process is "whether the defendant purposefully  
 21 established 'minimum contacts' in the forum [s]tate," *Burger King Corp. v. Rudzewicz*,  
 22 471 U.S. 462, 474 (1985) (quoting *Int'l Shoe Co.*, 326 U.S. at 316), and "that the  
 23 maintenance of the suit does not offend traditional notions of fair play and substantial  
 24 justice." *Id.* (internal quotation omitted). The "essential" inquiry is whether "the defendant  
 25 purposefully avails itself of the privilege of conducting activities within the forum State,  
 26 thus invoking the benefits and privileges of its laws." *Id.* at 475. These due process  
 27 concerns are satisfied by a finding of either general or specific jurisdiction.

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1 Plaintiffs do not argue that this Court maintains general jurisdiction over  
 2 Defendants, thus the Court will only examine whether specific jurisdiction exists. A  
 3 nonresident defendant's contacts with the forum state may permit the exercise of  
 4 specific jurisdiction if: (1) the defendant has performed some act or transaction within  
 5 the forum or purposefully availed itself of the privileges of conducting activities within the  
 6 forum, (2) the plaintiff's claim arises out of or results from the defendant's forum-related  
 7 activities, and (3) the exercise of jurisdiction over the defendant is reasonable.  
 8 *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 802 (2004). "If any of the  
 9 three requirements is not satisfied, jurisdiction in the forum would deprive the defendant  
 10 of due process of law." *Omeluk v. Langsten Slip & Batbyggeri A/S*, 52 F.3d 267, 270  
 11 (9th Cir. 1995). Plaintiffs bear the burden of proving the first two prongs of the test,  
 12 while Defendants must prove that exercise of jurisdiction would be unreasonable.  
 13 *Schwarzenegger*, 374 F.3d at 802. Below, the Court addresses each requirement in  
 14 turn.

15 **IV. JADE'S MOTION TO DISMISS**

16 **A. Analysis**

17 Plaintiffs contend that Nevada has specific jurisdiction over Defendant Jade in  
 18 this action because Jade received a letter of intent and several proposals from S&A  
 19 Nevada; the parties who negotiated the agreement were located in Nevada; Jade sent a  
 20 payment to Nevada; and Jade specifically requested that S&A Nevada be added as an  
 21 architect to the written agreement. (Dkt. no. 27 at 5.)

22 **1. Purposeful Availment**

23 To establish purposeful availment, Plaintiffs must show that Jade has performed  
 24 an affirmative act in Nevada which invokes the benefits and protections of Nevada's  
 25 laws. *Asahi Metal Indus. Co. v. Super. Ct. of Cal.*, 480 U.S. 102, 108 (1987)). When a  
 26 defendant "perform[s] some type of affirmative conduct which allows or promotes the  
 27 transaction of business within the forum state" the purposeful availment requirement is  
 28 met. *Sher*, 911 F.2d at 1362. For example, in *Asahi*, Justice O'Connor remarked that

1 purposeful availment is established by “designing the product for the market in the  
 2 forum State, establishing channels for providing regular advice to customers in the  
 3 forum State, advertising in the forum State, or marketing the product through a  
 4 distributor who has agreed to serve as the sales agent in the forum State.” 480 U.S. at  
 5 112.

6 An out-of-state defendant’s act of contracting with a plaintiff alone does not  
 7 create sufficient availment to support personal jurisdiction over the defendant. *Burger*  
 8 *King Corp.*, 471 U.S. at 478. Instead, courts look to negotiations leading up to the  
 9 contract’s formation, future consequences, terms, and parties’ course of dealings to  
 10 determine whether a defendant’s contacts are “substantial” and not merely “random,  
 11 fortuitous, or attenuated.” *Id.* at 479, 480 (internal quotations omitted). Additionally, the  
 12 in-forum activity of a plaintiff who claims a contractual relationship with a defendant  
 13 does not demonstrate the defendant’s substantial, purposeful connections to the forum.  
 14 See *Econ. Research Servs., Inc. v. Nw. Corp.*, No. C-07-04175 EDL, 2007 WL 4557785  
 15 at \*4 (N.D. Cal. Dec. 21, 2007) (“Similarly, [plaintiffs’] statement that they ‘performed  
 16 90% of [their] activities in the Bay Area,’ even if accurate, describes only unilateral  
 17 activity. Again, such activity fails to create personal jurisdiction over [defendants] . . . .”)  
 18 (*quoting McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 816 (9th Cir. 1988)).

19 The crux of the purposeful availment analysis here is whether Jade’s contacts  
 20 with Nevada result from its own actions, or resulted from Plaintiffs’ interactions with  
 21 Jade. *Accord Sinatra v. Nat’l Inquirer*, 854 F.2d 1191, 1195 (1988). Plaintiffs point to  
 22 the letters of intent and proposals sent from the Nevada office to Jade as evidence of a  
 23 purposeful availment. In doing so, Plaintiffs rely on *their* activity in Nevada to argue that  
 24 Defendants availed themselves to the privileges of doing business in this forum. But  
 25 Plaintiffs’ actions are irrelevant to establishing personal jurisdiction over Jade. See  
 26 *Republic Int’l Corp. v. Amco Eng’rs, Inc.*, 516 F.2d 161, 167 (9th Cir. 1975)  
 27 (“[A]ppellee’s emphasis upon the design and drafting work which went on in Los  
 28 Angeles is misplaced in light of the proposition that ‘(a plaintiff’s) performance in

1 California cannot give jurisdiction over (a defendant); it is (a defendant's) activity that  
 2 must provide the basis for jurisdiction.”) (quoting *Belmont Indus., Inc. v. Super. Court*,  
 3 31 Cal. Ct. App. 3d 281, 288 (5th Dist. 1973)). As such, letters of intent and proposals  
 4 originating from the Nevada office emailed unilaterally to Jade do not constitute  
 5 purposeful availment.

6 Plaintiffs also argue that the negotiations taking place between S&A Nevada  
 7 employees and Wessels through email and telephone evidence Jade's purposeful  
 8 availment. Generally, conducting negotiations in a forum state constitutes an invocation  
 9 of the state's laws and protections. *Resnick v. Row*, 283 F. Supp. 2d 1128, 1139 (D.  
 10 Haw. 2003). Recognizing that many transactions take place through remote  
 11 communications, the Ninth Circuit has held that physical absence of a defendant from a  
 12 forum does not defeat jurisdiction. *Roth v. Garcia Marquez*, 942 F.2d 617, 622 (1991).  
 13 However, the use of mail, telephone, or other interstate communication does not qualify  
 14 as purposeful activity invoking the laws and protections of a forum state. *Id.* Jade could  
 15 not have availed itself to Nevada because it did not invoke the laws and protections of  
 16 the state by sending emails or making phone calls to S&A Nevada. Further, the parties  
 17 never met in Nevada — the only in-person meeting took place in Macau. That the  
 18 employees who negotiated on behalf of Plaintiffs reside in Nevada has no relevance;  
 19 again, *Plaintiffs'* relationship with Nevada does not evidence *Defendants'* purposeful  
 20 availment to the state. Thus, Jade's email and telephone negotiations with S&A Nevada  
 21 cannot establish purposeful availment.

22 Plaintiffs cite to only two other facts in addition to those addressed above in their  
 23 attempt to establish Jade's purposeful activity toward Nevada: they argue that (1) Jade  
 24 sent payment to a Nevada bank and (2) Jade requested that S&A Nevada be added as  
 25 an architect to the agreement. While sending payment to a forum state provides some  
 26 evidence of purposeful availment, it “does not weigh heavily ‘in the calculus of  
 27 contacts.’” *Olivine Int'l Mktg., Ltd. v. Tex. Packaging Co.*, No. 2:09-CV-02118-KJD, 2010  
 28 WL 4024232 \*4 (D. Nev. Sept. 27, 2010) (quoting *Stuart v. Spademan*, 772 F.2d 1184,

1 1194 (5th Cir. 1985)). Moreover, although Jade requested that S&A Nevada be added  
 2 to the agreement, the addition of a state-specific party does not necessarily  
 3 demonstrate a defendant's purposeful availment if the contract does not require  
 4 performance to occur in that state. See *Lakeside Bridge & Steel*, 597 F.2d at 603  
 5 (holding that adding plaintiff "F.O.B. Sellers Plant Milwaukee Wisconsin" to a contract  
 6 did not give Wisconsin courts personal jurisdiction over defendants where the contract  
 7 did not require the plaintiff to perform its contractual obligations in Wisconsin). Neither  
 8 of these facts establishes that Jade purposefully availed itself to the laws of Nevada.

9 An examination of the parties' actual course of dealings and future  
 10 consequences of the agreement swings analysis under the first prong further in Jade's  
 11 favor. Plaintiffs argue that Jade benefited from its contacts with Nevada when it  
 12 acquired the architectural expertise of Paul Steelman, a Nevada resident. However, a  
 13 defendant's incidental or discrete contacts within the forum do not constitute purposeful  
 14 availment of the privileges of conducting business in the forum when the majority of the  
 15 contract is performed outside the forum. For example, in *Sher v. Johnson*, a California  
 16 plaintiff attempted to bring an action in California against his Florida-based attorney who  
 17 provided representation during his Florida criminal trial. The plaintiff alleged that the  
 18 purposeful availment requirement was met when the attorney accepted payment from a  
 19 California bank, made phone calls to California, and sent letters to California. 911 F.2d  
 20 1357 at 1362. Yet the Ninth Circuit held that because the attorney took no affirmative  
 21 action to promote his practice in California, these contacts were merely incidental to the  
 22 attorney's performance in Florida and not "the deliberate creation of a 'substantial  
 23 connection' with California." *Id.* The court concluded that even the three visits the  
 24 defendant made to California in connection with the representation could not support

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1 jurisdiction because they were “discrete events” attributable to a case occurring solely in  
 2 Florida.<sup>1</sup> *Id.* at 1363.

3 Jade’s contacts with Nevada are discrete acts arising from activity taking place  
 4 almost entirely outside Nevada, and thus do not demonstrate purposeful availment of  
 5 the privileges of doing business in Nevada. The design work Jade contracted with  
 6 Plaintiffs to perform occurred solely at the SAA office in Macau. Defendants produced  
 7 proposals bearing the SAA office name and address in Macau. In an email sent in  
 8 January 2008, SAA reassured Jade that its “team in Macau has not stopped working on  
 9 the project.” (Dkt. no. 20, Ex. C at 2.) While Plaintiffs allege that some work was  
 10 performed in Nevada, they have not produced any written proof. Thus, like the  
 11 attorney’s visits to California in *Sher*, Jade’s actions toward Nevada appear to be  
 12 “discrete events” arising out of an agreement which required performance entirely  
 13 outside the state. See *Sher*, 911 F.2d at 1362. That the performance did not occur in  
 14 Nevada undermines Plaintiffs’ assertion that Jade benefited from the architectural  
 15 expertise of Mr. Steelman; it is unclear how Jade would invoke the benefits and  
 16 protections of Nevada law when Nevada was not the location of Steelman’s  
 17 performance, or of the project itself.

18 Nor do the contemplated future consequences of the agreement support  
 19 jurisdiction in Nevada. By entering the agreement with Plaintiffs, Jade did not seek to  
 20 promote business in Nevada, it sought to promote its business in Macau. Defendants  
 21 did not advertise, market, or sell a product to Nevada residents. See *Asahi*, 480 U.S. at  
 22 112. Compare *Rigdon v. Bluff City Transfer & Storage Co.*, 649 F. Supp. 263, 268 (D.  
 23 Nev. 1986) (concluding defendants purposely derived benefits of doing business in  
 24 Nevada because they intended to expand their service to Nevada residents) *with Sher*,

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 26 <sup>1</sup>However, the court ultimately concluded that the plaintiff had purposefully  
 27 availed himself to the forum state because the plaintiff executed a deed of trust in favor  
 28 of his attorney to secure payment for representation. *Sher*, 911 F.2d 1357 at 1363. The  
 court held that this act invoked the laws and protections of California because it required  
 the application of California law and action of California courts to enforce. *Id.*

1 911 F.2d at 1362 (holding that defendants did not benefit from contacts with his  
 2 California client because defendant's business took place solely in Florida, and never  
 3 sought business in California). Jade employed Plaintiffs to design an entertainment  
 4 development project located and marketed entirely in Macau; thus Jade did not invoke  
 5 any benefits of doing business in Nevada.

6 For the reasons explained above, Plaintiffs have not established that Jade  
 7 purposefully availed itself to Nevada in this case.

8 **2. Arising Out of Forum-Related Activities**

9 The Ninth Circuit employs a "but for" test to determine whether a plaintiff's claim  
 10 arises out of a defendant's forum-related activity. *Ballard v. Savage*, 65 F.3d 1495 (9th  
 11 Cir. 1995). Under this test, the court must ask, but for the defendant's contacts with the  
 12 forum states, would the plaintiff's claims against the defendant have arisen? *Id.* at  
 13 1500.

14 Plaintiffs argue that but for negotiations taking place with individuals in Nevada,  
 15 work performed in Nevada by Nevada architects, and payment submitted to the Nevada  
 16 office, their claims against Jade would not have resulted. (Dkt. no. 27 at 6.) But as  
 17 mentioned above, it is apparent that contract performance was to occur in Macau. Most  
 18 of the communications between Jade and Plaintiffs occurred in Macau; Jade represents  
 19 that it regularly communicated with SAA employees (dkt. no. 20, Ex. C) (email from  
 20 Toko of Jade to SAA) and the only in-person meeting took place in Macau. Plaintiffs'  
 21 claims against Jade would have resulted despite Jade's limited contacts with Nevada  
 22 because of SAA's extensive relationship with Jade.

23 Plaintiffs have not provided sufficient evidence to establish purposeful availment  
 24 or a but-for relationship between themselves and Jade. Thus, Plaintiffs fail to establish  
 25 specific jurisdiction enabling this Court to exercise personal jurisdiction over Jade.  
 26 Consequently, the Court need not consider whether the exercise of personal jurisdiction  
 27 would be reasonable. See *Doe v. Unocal Corp.*, 248 F.3d 915, 925 (9th Cir. 2001).

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1       **V. SANUM'S MOTION TO DISMISS**

2           Sanum argues that personal jurisdiction is improper because it was not involved  
 3 with the Jade Entertainment Project during the time Plaintiffs became involved. Sanum  
 4 argues that it intended to purchase the property under development for the project, but  
 5 dropped out of the agreement prior to closing. (Dkt. no. 19 at 3.) According to Sanum,  
 6 after it exited the project, Jade purchased all shares of the property on January 23,  
 7 2006, and subsequently contacted Plaintiffs regarding project designs.<sup>2</sup> (Dkt. no. 19 at  
 8 3.) Sanum admits that its director, Toko Kobayashi, continued participating in  
 9 negotiations after Sanum dropped out of the project, but only as attorney-in-fact for  
 10 Jade. (Dkt. no. 19, Ex. A at ¶18.)

11           Plaintiffs argue that Toko Kobayashi was acting as Director of Sanum, not  
 12 attorney-in-fact for Jade, throughout its involvement with the project. (Dkt no. 27 at 4-5.)  
 13 Plaintiffs also argue that Jade's Managing Director, Robert Wessels, represented  
 14 Sanum throughout negotiations. (*Id.* at 4.) Further, Plaintiffs argue that Sanum's name  
 15 on the owner/agreement shows their substantial involvement with the project.

16           Even assuming Sanum was involved with the agreement through Toko  
 17 Kobayashi's involvement and/or Wessels' representation, Plaintiffs have not established  
 18 that Sanum made sufficient minimum contacts with Nevada enabling a Nevada court to  
 19 exercise personal jurisdiction over Sanum. While the owner/architect agreement lists  
 20 Sanum as the owner (dkt. no. 19, Ex. F at 2.), Plaintiffs concede that Wessels  
 21 requested Sanum's name be removed from the agreement, and Jade's name added.  
 22 (Dkt no. 1 at ¶14, see also dkt. no. 20, Ex. I at 3.) With respect to Wessels representing  
 23 Sanum during negotiations, as discussed above, the negotiations occurring between  
 24 Wessels and S&A Nevada do not demonstrate purposeful availment to Nevada  
 25 because they occurred through international communications. For the same reason,  
 26 Toko Kobayashi's involvement in negotiations as Director of Sanum does not

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27           <sup>2</sup>The record is not clear about which Steelman office Jade approached, but this  
 28 fact is not dispositive.

1 demonstrate purposeful availment to Nevada. Additionally, Toko's sending payment to  
 2 Nevada does not evidence purposeful availment; the payment was incidental to the  
 3 performance of the agreement, and did not invoke the protections of the state of  
 4 Nevada. Given that Sanum conducts its business solely in Macau, Sanum's connection  
 5 to Nevada by way of Toko Kobayashi and Wessels is much too attenuated to justify the  
 6 exercise of Nevada court jurisdiction over it. *See Burger King Corp.*, 471 U.S. at 475.

7 Finally, Plaintiffs contend that the claim arose from Sanum's involvement  
 8 because Plaintiffs were acting under a reasonable belief that Toko Kobayashi was  
 9 representing Sanum during negotiations. (Dkt. no. 27 at 6.) However, Plaintiffs have  
 10 not explained how the exercise of jurisdiction over a defendant pursuant to a plaintiff's  
 11 reasonable belief comports with minimum contacts and due process standards.<sup>3</sup> This  
 12 Court cannot exercise jurisdiction over a defendant merely based on a Plaintiffs'  
 13 reasonable *belief* that the defendant was involved in the operative transaction. The  
 14 Court thus concludes that Plaintiffs' claims did not arise out of Sanum's involvement  
 15 with the agreement.

16 **VI. CONCLUSION**

17 This Court finds no personal jurisdiction exists; therefore, it does not reach  
 18 Defendants' arguments regarding service of process or *forum non conveniens*.

19 IT IS THEREFORE ORDERED that Defendants' Motions to Dismiss (dkt. nos. 19  
 20 and 20) are GRANTED. All claims asserted against Defendants Sanum and Jade are  
 21 DISMISSED WITHOUT PREJUDICE.

22 DATED THIS 21<sup>st</sup> day of March 2013.

23  
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 26 MIRANDA M. DU  
 27 UNITED STATES DISTRICT JUDGE

28 <sup>3</sup>The only case cited, *Great Am. Ins. CO. v. Gen. Builders, Inc.*, 111 Nev. 346, 934 P.2d 257, 261 (Nev. 1997), refers to apparent agent authority to enter into contracts, and does not provide support for Plaintiffs' argument.